

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RUEBEN OLVEDA, et al.

Plaintiff,

v.

Civ. Case No. 20-29 KRS/JHR

**CIBOLA COUNTY BOARD OF
COMMISSIONERS,
SHERIFF TONY MACE and UNDERSHERIFF
MICHAEL MUNK,**

Defendants.

ORDER APPOINTING GUARDIAN AD LITEM

THIS MATTER having come before the Court on the joint motion of the parties for the appointment of a Guardian Ad Litem to assist the Court in evaluating a proposed settlement of this litigation, the Court having reviewed the pleadings and being otherwise fully advised, hereby finds:

1. A Guardian Ad Litem should be appointed by this Court in connection with the Court's approval of a settlement involving minor children.
2. The Guardian Ad Litem should be appointed to investigate on behalf of the Court into the fairness and reasonableness of the settlement and its effect on the minor children.
3. The Guardian Ad Litem's appointment does not contemplate representation of the Plaintiff or the minor children as an advocate, but only as a functionary of the Court.
4. The Guardian Ad Litem's responsibilities under this appointment are to the Court, and not to the Plaintiff or the minor children. The Plaintiff in this matter is already represented by counsel, and the Guardian Ad Litem under this appointment should not be

requested to invade or interfere with counsel's responsibility to adequately and effectively represent the Plaintiffs.

5. There are strong public policy reasons to grant immunity to the Guardian Ad Litem in this case, who is acting as an "Arm of the Court" and is performing an essential role in this Court's Administration of Justice, as the Judge's assistant.

6. All immunities and privileges available to the Guardian Ad Litem, as articulated by the New Mexico Supreme Court in *Collins v. Tabet*, 111 N.M. 391, 806 P.2d 40 (1991) should be extended to the Guardian Ad Litem in this matter.

7. The Court has considered the factors, and balancing test set forth by the New Mexico Supreme Court in *Leyba v. Whitley and Shapiro*, 120 N.M. 768, 907 P.2d 172 (1995), in determining the Guardian Ad Litem's duties, and finds that no duty is owed by the Guardian Ad Litem to the Plaintiff or minor children in this case.

8. Holly R. Harvey is qualified to perform as a Guardian Ad Litem in this matter.

THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Holly R. Harvey, shall be, and hereby is, appointed Guardian Ad Litem as an "Arm of the Court," appointed in connection with this Court's consideration of a settlement involving minor children. Holly R. Harvey shall be absolutely immune from any liability for her actions taken pursuant to this appointment, insofar as her conduct in the case is as a result of an investigation on behalf of this Court into the fairness and reasonableness of the settlement in its effect on the minor children. The Guardian Ad Litem's duties and obligations are owed to the Court, and not to the Plaintiffs or the minor children.

This appointment of Holly R. Harvey as Guardian Ad Litem is intended to convey

upon Ms. Harvey all of the immunities and protection available under *Collins v. Tabet*, 111 N.M. 391, 806 P.2d 40 (1991). The Court will apportion the cost of the Guardian Ad Litem between the parties at the conclusion of these proceedings.



THE HONORABLE KEVIN R. SWEAZE
United States Magistrate Judge, *Sitting by Consent*

Approved and submitted by:

LAW OFFICE OF JONLYN M. MARTINEZ, LLC

/s/ Jonlyn M. Martinez
JONLYN M. MARTINEZ
Attorney for Defendants
jonlyn@jmartinezlawn.net

KENNEDY KENNEDY & IVES, PC

Approved telephonically November 19, 2020
JOSEPH P. KENNEDY
ADAM C. FLORES
Attorneys for Plaintiffs
jpk@civilrightslawn.com
acf@civilrightslawn.com

Approved electronically November 18, 2020
HOLLY R. HARVEY
holly@hklawnm.com